

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARIO RICO)	
Claimant)	
VS.)	
)	
EXCEL CORPORATION)	Docket Nos. 175,982
Respondent)	& 175,983
Self-Insured)	

ORDER

On September 12, 1996, the application of the claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Jon L. Frobish dated February 19, 1996, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, Stanley R. Ausemus of Emporia, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, D. Shane Bangerter of Dodge City, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What, if any, is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law.

At the time of oral argument, discussion between counsel and the Appeals Board resulted in the acknowledgment that Docket No. 175,983 was dismissed at regular hearing pursuant to the agreement of the parties and, as such, the issues contained in Docket No. 175,983 are not before the Appeals Board. The Award of the Administrative Law Judge dismissing that matter should be, and is hereby, affirmed.

In Docket No. 175,982, claimant claimed accidental injury on November 20, 1992, to his right hand and his right leg. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

The Administrative Law Judge found claimant to have suffered a 4 percent permanent partial general body disability on a functional basis. The opinion was based on the medical opinion of Dr. C. Reiff Brown. The Appeals Board finds that the evidence in the record does justify an award to claimant of 4 percent to the body as a whole on a functional basis. The application by the Administrative Law Judge of the policy of Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 p. 2d 140, (1994), rev. denied, 257 Kan. 1091, (1995), is appropriate as claimant was given the opportunity to work within his medical restrictions and claimant chose, instead, to be terminated rather than take the job offered by respondent. As such, the presumption of no work disability contained in K.S.A. 1992 Supp. 44-510e applies and claimant is entitled to an award based on his functional impairment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated February 19, 1996, should be, and is hereby, affirmed in all respects.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Mario Rico, and against the respondent, Excel Corporation, a qualified self-insured, for an accidental injury which occurred on November 20, 1992. Claimant is entitled to temporary total disability compensation in the amount of \$1,192.88, representing 4.96 weeks at \$240.50 per week, followed thereafter by 410.04 weeks permanent partial general disability at the rate of \$9.62 per week totalling \$3,944.58 for a 4% permanent partial general body disability, making a total award of \$5,137.46.

As of September 19, 1996, there is due and owing claimant 4.96 weeks of temporary total disability compensation at the rate of \$240.50 per week or \$1,192.88, followed by 194.90 weeks of permanent partial compensation at the rate of \$9.62 per week in the sum of \$1,874.94 for a total of \$3,067.82, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$2,069.64 is to be paid for 215.14 weeks at the rate of \$9.62 per week, until fully paid or further order of the Director.

Pursuant to K.S.A. 44-536, claimant's contract of employment with his attorney is hereby approved.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Tri-State Reporting Services	
Transcript of Preliminary Hearing	\$106.00
Susan Maier	
Deposition of John F. Lindal	\$ 88.37
Deposition of Susan Stephens	\$194.37
Hostetler & Associates, Inc.	
Deposition of Donald E. Vander Vegt	\$106.80
Barber & Associates	
Deposition of Mark Melhorn, M.D.	\$194.00
Advanced Court Reporting Services	
Deposition of C. Reiff Brown, M.D.	\$164.55

K. Pfannenstiel Reporting & Assoc.	
Deposition of Aly M. Mohsen, M.D.	\$202.85
Transcript of Regular Hearing	\$188.88

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
D. Shane Bangerter, Dodge City, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director